paid so far as possible in the liquidation proceedings. They may also prove their claims against the bankrupt, *In re Bates* (1900) 100 Fed. 263, although they cannot receive any dividend until after the individual creditors have been paid in full; § 5f; *In re Wilcox* (1899) 94 Fed. 84; *In re Janes* (1904) 133 Fed. 912. The discharge is, according to the best authority, a valid bar to partnership and individual obligations. *N. Y. Institution* v. *Crockett* (N. Y. 1907) 117 App. Div. 269; 7 COLUMBIA LAW REVIEW 272. On the other hand, if the firm commits an act of bankruptcy, the partnership entity is adjudicated "a bankrupt," § 5a; the partnership creditors elect the trustee, § 5b [for § 5h seems applicable only to the bankruptcy of a partner when the firm is not declared a bankrupt, *In re Harris* (1900) 4 Am. B. R. 133; Collier, Bank. (6th Ed.) 87]; the partnership assets are collected, and the partnership debts are paid. The discharge of the partnership entity would be a nullity, *Chemical Nat. Bank* v. *Meyer, supra,* 899; *In re Forbes, supra,* 140, for the partners, whether regarded as co-debtors with their firm, or as quasi-sureties for its debts, would still be liable by virtue of § 16. The result would be much like the bankruptcy of a corporation whose stockholders are under a statutory liability for its debts. See § 4b. The net result of a partnership bankruptcy, then, would be an administration of its estate; the partners must then either pay off what remains of its indebtedness, or if unable to do so become voluntary bankrupts; or the partnership creditors, who are their individual creditors also, may cause them to be adjudicated involuntary bankrupts. *Matter of Hee* (1904) 13 Am. B. R. 8.

DISPOSITION OF ACCUMULATIONS UNDER NEW YORK STATUTES.—In determining the person to whom, as "presumptively entitled to the next eventual estate," the rents and profits of realty or the income of personal property should belong where they were undisposed of, and no valid direction for their accumulation was given, 1 R. S. 726, § 40; Laws 1896 c. 547, § 53; 1 R. S. 773, § 2; Laws 1897 c. 417, § 2; *Cook* v. *Lowry* (1884) 95 N. Y. 103; and see 7 COLUMBIA LAW REVIEW 403, the court in *Manice* v. *Manice* (1871) 43 N. Y. 303, 385, said: "The statute does not say the ultimate, but the next eventual estate. That is, the estate which is to take effect upon the happening of the event which terminates the accumulation." Unless the word "presumptively" is to be nullified, and since the person presumptively entitled can take the accumulations at once as they accrue, *Manice* v. *Manice, supra,* 385; *Matter of Crossman* (1889) 113 N. Y. 503, "the presumption must be determined as of the present moment, i. e. the court must decide who would take the next eventual estate if the contingency happened now." 7 COLUMBIA LAW REVIEW 403. Where there is one contingency only, and where, assuming it to happen now, no supposition need be indulged in favor of one of several adverse claimants of the next eventual estate, there is no difficulty in determining the person presumptively entitled. *Manice* v. *Manice, supra; Pray v. Hegeman* (1883) 92 N. Y. 508; *Delafield* v. *Shipman* (1886) 103 N. Y. 463; 7 COLUMBIA LAW REVIEW 403; and see *Cochrane* v. *Schell* (1894) 140 N. Y. 516. If, however, the determination of the person entitled depends upon a choice

between the positive and negative aspects of a contingency, other than the event which terminates the accumulation, and between persons *in esse*, it would seem that no "presumption" should be indulged and that the accumulations should pass to the next of kin under the Statute of Distributions. See *U. S. Trust Co.* v. *Soher* (1904) 178 N. Y. 442. Suppose property is left in trust to pay a fixed annual sum out of the income to A for life, and upon his death the corpus to go to B if he is unmarried at that time; if not, then to C. Logically, of course, in assuming A's death at the present moment, one should assume also that B will be unmarried at A's death as he is now. Thus the difficulty, *supra*, could be avoided, but practically there is an unfair discrimination between living persons having equal contingent claims to the expectant estate. This may have been the basic idea of the decision in *U. S. Trust Co.* v. *Soher, supra*, but if so, it is submitted that it was misapplied and that the real decision was a refusal to choose between two contingencies respectively terminating distinct accumulations, on the ground that a presumption of survivorship could not be indulged. See 7 COLUMBIA LAW REVIEW 403, where the case is discussed. Whether or not the courts will discriminate between living contingent remaindermen, *supra*, it seems clear that they will favor one *in esse* as against one not yet born, *Cook* v. *Lowry, supra;* and see *Kilpatrick* v. *Johnson* (1857) 15 N. Y. 322; *Haxtun* v. *Corse* (1848) 2 Barb. Ch. 506, except, perhaps, in a case where the application of the rule would work great injustice and violate the testator's intention. *U. S. Trust Co.* v. *Soher, supra.*

A more difficult and unusual case is presented when there are two events, the happening of either of which will terminate the accumulation. If the *same* person or persons would be entitled to an estate upon either contingency, there would seem to be no objection to the assumption that either or both happen at the present moment, in determining the person or persons presumptively entitled. Thus, if there is a trust to pay a fixed annual sum out of the income to A so long as he remains alive and unmarried, the principal upon A's death or marriage to go to B if living, it is clear that B is the person presumptively entitled. Cf. *Matter of Crossman* (1889) 113 N. Y. 503. It may be, however, that upon the happening of each event *different* persons respectively will become entitled to an estate. In such a case, if the events are equally certain or uncertain to happen it is difficult to assume that one will occur before the other. See *U. S. Trust Co.* v. *Soher, supra.* But a choice may be made in favor of a person *in esse* if the alternative involves an assumption of the death of that person. Thus in *Pray* v. *Hegeman, supra*, in holding the children to be presumptively entitled, the court was forced to choose the uncertain event of each child attaining majority, and reject the uncertain event of each child dying under age. Cf. *Kilpatrick* v. *Johnson, supra.* On the other hand, if one of the events is certain to happen and the other uncertain, it would seem that the choice if any be made, should favor the certain event. In *Kilpatrick* v. *Johnson, supra*, the testator left a share of his personal property in trust for his daughter, A, for life, the income or principal to be applied to her support so far as actually necessary, (1) if her husband

died, or (2) if he was unable to support her; and on A's death the principal and interest were to be divided among her children. The court, per Denio, C. J., held that A's children *in esse* were presumptively entitled. This conclusion seems to involve a rejection of the first two uncertain events, upon the happening of either of which, A would be entitled to an estate, *Pray* v. *Hegeman, supra;* 7 COLUMBIA LAW REVIEW 403, and the choice of the certain one, i. e., A's death. Cf. *Pray* v. *Hegeman, supra.*

In striking contrast to this result is the decision of the Court of Appeals in the recent case of *St. John* v. *Andrews Institute for Girls* (N. Y. 1908) 83 N. E. 981. There a testator devised the residue of his estate to executors in trust to pay the income to his wife for life, and directed that upon her death a part of the residue should go to a charitable corporation to be formed by the executors within two lives in being, and declared that in case his intention with respect to the said institution for girls should because of illegality fail or become impossible of realization, the property should go to the Smithsonian Institute. The wife perished with the testator and the Andrews Institute was subsequently formed as directed. The question was as to who should take the undisposed of income which had accrued prior to the formation of the Andrews Institute. Clearly there were two events here, the happening of either of which would terminate the accumulation: (1) the dropping of the two lives, an event *certain* to happen, upon the happening of which the Smithsonian Institute, a person already *in esse,* would be entitled to an estate; (2) the formation of the Andrews Institute, an event not certain to happen, upon the happening of which a hitherto non-existing person, the Andrews Institute, would be entitled to an estate. In order to tell in whom, as presumptively entitled, the accumulations vested prior to the happening of either event, a choice must be made between the events and one must be assumed to have happened. Inasmuch as the first is certain and favors a person *in esse* it would seem that it should be chosen, if any choice is made. *Supra.* Accordingly, the Smithsonian Institute would be presumptively entitled and would not be divested by the subsequent formation of the Andrews Institute, assuming that the trust ceased upon that event, the Andrews Institute not being entitled to a "next" estate. 7 COLUMBIA LAW REVIEW 403, where the decision of the Appellate Division is discussed. If the choice favors the second event it prefers the uncertain to the certain, *supra,* disregards a person *in esse, supra,* and allows the Statute of Distribution to operate in default of a person in being to take as presumptively entitled, thus violating the intent of § 53, *supra,* to provide for all possible cases. 7 COLUMBIA LAW REVIEW 403; cf. 8 COLUMBIA LAW REVIEW 298. The objection that the proposed incorporation was never illegal or impossible of realization, of course falls with the assumption of the first event. However, the court held that "the event was the formation of the Andrews Institute," and that the accumulations should pass to the next of kin under the Statute of Distributions. This decision seems to lay down a new rule governing a choice between contingencies, making the intention of the testator decisive, and is hard to reconcile with the statement in *Manice* v. *Manice, supra,* that "The intent of the statute, and not of the testator must govern the disposition of this undisposed of fund."